



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 13 2011

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K Street, Suite 600
Washington, DC 20007

RE: MURs 6363 and 6440
Friends of Frank Guinta and Richard Springer, in
his official capacity as treasurer
Frank Guinta

Dear Ms. Mitchell:

On September 3, 2010 and December 13, 2010, the Federal Election Commission notified your above-referenced clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaints was forwarded to your clients at those times.

Upon further review of the allegations contained in the complaints, and information supplied by you and your clients, the Commission, on August 30, 2011, found that there is reason to believe that Friends of Frank Guinta and Richard Springer, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f) and Frank Guinta violated 2 U.S.C. § 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Cynthia L. Bauerly
Chair

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Frank Guinta and
Richard Springer, in his official
capacity as Treasurer

MURS: 6363 and 6440

Frank Guinta

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by Christopher Wolfe, and Michael D. Brunelle and the New Hampshire Democratic Party, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Friends of Frank Guinta and Richard Springer, in his official capacity as Treasurer, and Frank Guinta.

II. FACTUAL AND LEGAL ANALYSIS

On April 30, 2009, Frank Guinta filed a Statement of Candidacy for the 2010 Congressional race for the 1st District of New Hampshire. Guinta won the Republican primary election on September 14, 2010, won the general election on November 2, 2010, and is presently the U.S. Representative for New Hampshire's 1st Congressional District. See Office of the Secretary of State of New Hampshire website at <http://www.sos.nh.gov/electwinwin.html>. As detailed in the chart below, the Committee's disclosure reports indicate that during the course of the primary election campaign Guinta loaned the Committee a total of \$245,000 in "personal funds" and contributed an additional \$110,000:

Frank Guinta Reported Loans and Contributions

DATE	AMOUNT OF FUNDS	REPORTED TRANSACTION
06/20/2009	\$ 20,000	loan
03/28/2010	\$100,000	loan
06/27/2010	\$125,000	loan
09/03/2010	\$ 60,000	contribution
09/10/2010	\$ 50,000	contribution
	TOTAL: \$355,000	

On May 15, 2009, Guinta filed a financial statement required for House candidates by the Ethics in Government Act ("EIGA"), 2 U.S.C. § 101 *et seq.* The 2009 EIGA statement covered the period January 1 through December 31, 2008. According to the 2009 EIGA statement, in 2008 Guinta had a salary of \$72,000, two bank accounts valued at \$1,001 - \$15,000 each, one bank account valued at \$15,001 - \$50,000, and various stocks and mutual funds. See 2009 EIGA statement. Guinta's 2010 EIGA statement, which covered the period January 1 - December 31, 2009, and was filed on May 15, 2010, reflected the same assets as his 2009 EIGA statement. See 2010 EIGA statement.

On July 23, 2010, Guinta amended his 2010 EIGA statement disclosing a previously unreported bank account at the Bank of America containing \$250,001 - \$500,000. Guinta also disclosed rental income falling within the \$15,000 - \$50,000 range, and interest income in the range of \$1,200 - \$3,900. In addition, Guinta amended the period covered by the disclosure by adding the months of January through April 2010.

Complainants filed the complaints at issue here on September 1 and December 7, 2010, alleging that Guinta did not have sufficient personal funds to make the loans and contributions at issue, and that, therefore, he must have used funds from another source, in

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violation of the Act. News articles attached to the initial complaint report various explanations from Guinta or his campaign committee concerning the source of the funds. Specifically, a news story reported that Guinta maintained that he earned the funds through years of work and frugal living. Fergus Cullen, *Union Leader: GOP Activist Questions Congress Candidate Guinta's Finances*, <http://www.unionleader.com/article.aspx?Headline=GOP+activist+questions+Congress+candidate+Guinta%27s+finances&articleId=350fec49-620d-42d7-a270-9a66a18d1b51>, Aug. 13, 2010 (Compl. Attach. 2). According to another article, Guinta's campaign director stated that "Frank Guinta amended his financial disclosure report last month, after questions were raised concerning the source of what was proven to be a legitimate personal loan ... from a series of accounts Guinta has had since March of 1996." Kasie Hunt, *Politico: Bradley: Guinta Should Drop Out*, <http://www.politico.com/news/stories/0810/41058.html>, Aug. 13, 2010 (Compl. Attach. 3). According to an additional news report, Guinta stated that over the past 14 years he has put money into several personal accounts which are the source of his campaign loans, and further explained that "It's multiple accounts at Bank of America, it's not just one. My first account I opened up back in 1996. Since then I've opened up multiple, additional accounts, and these are all at Bank of America. I opened up two additional accounts in 2001, another two in 2002, and another in 2004." Drew Cline, *Guinta Explains Source of His Campaign Loans*,

<http://blogs.unionleader.com/andrew-cline/index.php/archives/1786>, Aug. 18, 2010 (Compl.

Attach. 6).

In response to the second complaint, Guinta and the Committee assert, *inter alia*, that there has been no violation of the Act and that the funds in the belatedly disclosed bank account "were and are the personal funds of the candidate." Response dated January 20, 2011. In an attached affidavit, Guinta averred, "I possess legal access [to] the funds in the Account based upon an equitable interest, and pursuant to a specific commitment and pledge to me from my parents that the funds in the Account were available to me for my use for whatever purpose(s) I deemed appropriate." Guinta Response dated January 20, 2011, Guinta Affidavit at ¶ 10. Guinta further averred that, "[a]fter considering various potential uses of the funds in the Account over a period of several years, I determined to utilize the funds for my congressional campaign." *Id.* at ¶ 11.

III. LEGAL ANALYSIS

The Act prohibits any person from making contributions "to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$2,000." 2 U.S.C. § 441a(a)(1)(A). Indexed for inflation, this contribution limit was \$2,400 in the 2010 election cycle. The Act also prohibits any individual from making contributions "aggregating more than \$25,000 in any calendar year."

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2 U.S.C. § 441a(a)(3). These contribution limits also apply to a candidate's family members.¹

A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

2 U.S.C. § 431(8)(A)(i). In addition, the Act prohibits any candidate or political committee from knowingly accepting any contribution or making any expenditure in violation of the provisions of section 441a. 2 U.S.C. § 441a(f). All contributions made by persons other than political committees must be reported in accordance with 2 U.S.C. § 434(b)(2)(A). Political committees must report the identification of each person who makes a contribution or contributions with an aggregate value in excess of \$200 during the reporting period, together with the date and amount. 2 U.S.C. § 434(b)(3). The Act also prohibits a person from making a contribution in the name of another person, knowingly permitting his name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another. 2 U.S.C. § 441f.

At issue in this matter is whether the \$355,000 in funds that Guinta loaned and contributed to his campaign between June 2009 and September 2010 came from his personal funds. Commission regulations define "personal funds" as, *inter alia*, "[a]mounts derived from any asset that, under applicable State law, at the time the individual becomes a

¹ In *Buckley v. Valeo*, 424 U.S. 1, 51 n. 57 (1976) ("*Buckley*"), the Supreme Court stated that the legislative history of the Act provided, "It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for each election involved. S. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin. News 1974, p. 5627." The Court further stated, "Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53, n. 59.

candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had (1) legal and rightful title; or (2) an equitable interest.” 11 C.F.R.

§ 100.33(a).

Guinta filed a Statement of Candidacy on April 30, 2009. Thus, Guinta’s “personal assets” would include amounts from any asset that Guinta had legal right of access to or control over on or before April 30, 2009. Guinta’s 2009 EIGA statement reflected that at the end of 2008, Guinta had a salary of \$72,000 and liquid assets of up to \$80,000 – substantially less than the \$355,000 he reportedly contributed to his campaign. Guinta has never amended his 2009 EIGA statement. Guinta’s 2010 EIGA statement similarly reflected that at the end of 2009, he had a salary of \$72,000 and liquid assets of up to \$80,000. Guinta subsequently amended his 2010 EIGA statement, disclosing a previously unreported Bank of America account containing \$250,001 - \$500,000.

Nevertheless, based on the available information, there is reason to believe that Guinta did not have enough personal funds to finance his loans and contributions to his campaign. First, there are a number of discrepancies that require further clarification. Guinta’s averments in response to the complaint—that he possessed “legal access [to] the funds in the Account based upon an equitable interest, and pursuant to a specific commitment and pledge to me from my parents that the funds in the Account were available to me for my use for whatever purpose(s) I deemed appropriate”—suggest that the funds at issue were in one account that was held in his parents’ name. Guinta Response dated January 20, 2011, Guinta Affidavit at ¶ 10. This appears to be at odds with his earlier representations to the news media that: (1) the funds were in multiple accounts, and (2) that he earned the money and saved it himself, in which case the funds would presumably be held in his own name.

Further, although he avers that he possessed legal access to the funds in the Account based upon an equitable interest, he does not precisely state the basis for that equitable interest, or when he obtained that interest, which would clarify whether the funds were personal funds under Commission regulations. See 11 C.F.R. § 100.33(a) (personal funds are, *inter alia*, those to which an individual, *at the time he or she became a candidate*, had legal right of access to or control over, and with respect to which the candidate had (1) legal and rightful title; or (2) an equitable interest). Guinta's statement that the funds at issue came from personal bank accounts that he opened between 1996 and 2004, *see* Drew Cline, *Guinta Explains Source of His Campaign Loans*, <http://blogs.unionleader.com/andrew-cline/index.php/archives/1786>, Aug. 18, 2010 (Compl. Attach. 6 at 2), and his averment that he had considered "various potential uses of the funds in the Account over a period of several years," *Id.* at ¶ 11 [emphasis added], appear to be inconsistent with his actions. Specifically, Guinta did not disclose in his 2009 EIGA Statement that he possessed the funds at issue during 2008, prior to becoming a candidate in April 2009. See 2009 EIGA Statement. In addition, while Guinta amended his 2010 EIGA Statement, he has never amended the earlier 2009 EIGA Statement to reflect that the funds at issue were among his personal assets in 2008. This omission suggests that Guinta, if he held a legal and rightful title or an equitable interest at all, may have acquired that title or interest as late as 2010, when he was already a candidate.² If this is the case, the funds Guinta loaned and contributed to his campaign would not constitute "personal funds" under Commission regulations and would result in excessive contributions made in the name of another, that were inaccurately reported. Therefore, based

² Further, it is not clear why Guinta added extra months to the period of coverage for the amended 2010 EIGA Statement (changing coverage from January 1, 2010 through December 31, 2010, to January 1, 2010 through April 30, 2010).

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on the foregoing, the Commission has determined to find reason to believe Friends of Frank Guinta and Richard Springer, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f), and that Frank Guinta violated 2 U.S.C. § 441f.